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NEW DELHI, MONDAY, JUNE 15, 1953

ELECTION COMMISSION, INDIA

NOTIFICATIONS,

New Delhi, the 1st June 1953

S.R.O. 1127.—WHEREAS the election of Shri Hirday Narain Singh, Husainabad, Principal Tilakdhami College, Jaunpur, Shri Balbhadra Prasad Vajpai, Maqboolganj, Lecturer, Kanyakubja College, Lucknow and Shri Ram Kishore Sharma of 39, Civil Lines, Bareilly, as members of the Legislative Council of the State of Uttar Pradesh, from the Uttar Pradesh East Teachers' constituency of that Council has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Jawahar Shanker Pacholi, Son of Shri Girdhar Lal, Katiatola, Shahjahanpur;

AND WHEREAS, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

NOW, THEREFORE, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE ELECTION TRIBUNAL, FAIZABAD

PRESENT:

Sri D. N. Roy—Chairman.

Sri A. Sanyal—Member.

Sri M. U. Faruqi—Member.

ELECTION PETITION NO. 8/331 OF 1952

Jawahar Shankar Pacholi—Petitioner.

Versus

1. Sri Hirday Narain Singh.
2. Sri Balbhadra Prasad Vajpai.
3. Sri Ram Kishore Sharma.
4. Sri Murildhar Srivastava.
5. Sri H. B. Malkani.
6. Sri Ram Balak Shastri.
7. Sri Girja Dayal Srivastava.
8. Sri Deoki Nandan.
9. Sri Hari Swaroop Jauhari.
10. Sri Shankar Vidyarthi—Respondents.

[1937]

JUDGMENT

The petitioner and the respondents stood for election for membership of the U.P. Legislative Council from the U.P. East Teachers' Constituency during the elections held in the year 1952. Result of the election was declared on April 29, 1952. Three members were to be elected from this constituency by means of the system of single transferable vote. The first three respondents were declared elected defeating the petitioner and respondents 4 to 10.

This election petition was filed before the Election Commission which appointed this Tribunal for decision of the same.

The grounds on which the election is sought to be avoided were good many. The first allegation was that all the nomination papers were improperly accepted by the Returning Officer except one which was improperly rejected. The second allegation was that the attestation slips containing signatures of the voters were attested by persons who were not authorised to do so. It was alleged that this irregularity made the election of Respondents 1 to 3 void. Third allegation was that election of Respondent No. 2 was void because the said Respondent and his workers and agents published and circulated appeals containing false statement casting reflection on the character and conduct of the Petitioner. Fourth allegation was that the election of Respondent No. 3 void because he issued an appeal purporting to have been issued by 37 persons out of whom at least two never subscribed to the said appeal. Fifth allegation was that the election of Respondent No. 1 was void because he submitted false return of election expenses. Sixth allegation was that the election of Respondents Nos. 1 to 3 was void because they issued circulars having reference to the election which did not bear on their face the name and address of the printer and publisher thereof. Seventh allegation was that Respondent No. 5 was disqualified for future because he, too, issued circulars without printer and publisher's name and also because in his return of election expenses this Respondent did not show costs of printing one appeal which is annexure P3 attached to the petition. Eighth and last allegation was that the result of the election was vitiated because names of some of the electors were entered in electoral roll more than once and such persons had voted more than once.

Out of the ten Respondents only Respondents 1 to 4, 6, 8 and 9 filed written statements. Respondents 1 to 3 alone contested the petition. They denied the allegations contained in the petition and raised the plea of limitation. Respondent 1 added some counter allegations against the Petitioner. The remaining answering respondents admitted the allegations contained in the petition but they pleaded that their respective nomination papers were properly accepted. It may be noted that though the petition contained some serious allegations against Sri H. B. Malkani, Respondent 5, in spite of proper service he did not turn up nor did he file any written statement.

The pleadings of the parties gave rise to the following issues.

ISSUES

- (1) Is the petition barred by limitation?
- (2) (a) Have the nomination papers of Respondents Nos. 1 to 10 been improperly accepted for the reason given in para 10(a) of the petition?
- (b) Was Respondent No. 5 disqualified to stand as a candidate from the Uttar Pradesh Teachers' (East) Constituency on the ground that he was not an elector in that Constituency?
- (c) Has the result of the election been materially affected by the improper acceptance of the nomination papers?
- (d) Whether one of the nomination papers of the Petitioner was improperly rejected by the Returning Officer? If so, with what effect?
- (e) (a) Were the persons mentioned in list 'A' of the petition employed by, or on behalf of, or otherwise working for any of the Respondents in or about the election, within the meaning of notification marked A2 in the petition?
- (b) Did the persons mentioned in list 'A' attest any ballot paper in favour of Respondents 1, 2, 3 and 5? If so, were they not authorised to do so?
- (c) Were any votes attested by such persons improperly accepted by the Returning Officer? Has the result of the election been materially affected thereby?

(4) Is the notification in list A.2 of the petition viz., notification No. E. 2475/XVII, dated 29th February 1952 of the Government of U.P., Legislative (Elections Department) ultra vires of the powers of the Election Commission?

(5) Was the corrupt practice of publication of false statement committed by, or in the interest of Respondent No. 2 as alleged in para 12(a) of the petition by means of publications, mentioned in list 'B'?

(6) Has Respondent No. 3 committed the corrupt practice of publication of false statement as alleged in para 12(b) of the petition?

(7)(a) Is the Return of Election Expenses filed by Respondent No. 1 false in material particulars?

(b) If so, has his election been procured or induced, or the result of his election, been materially affected by such corrupt practice?

(8)(a) Did Respondents 1 to 3 commit an illegal practice under section 125(3) of the Representation of the People Act by issuing circular and notices, as mentioned in list D of the petition?

(b) If so, has the election of the returned candidates been procured or induced, or the result of the election has been materially affected thereby?

(9) Did the persons mentioned in list E of the petition cast votes several times over? Were any such votes improperly received? Has the result of the election been materially affected thereby?

(10) Whether the reliefs claimed are against the provisions of section 84 of the Representation of People Act?

(11) To what relief, if any, is the petitioner entitled?

FINDINGS

Issue 1.—Finding on this issue was given by us at a preliminary stage. That finding with reasons forms part of this judgment as Annexure A.

Issue 2(a).—Admitted facts are that the last date for filing nomination papers was March 15, 1952. Scrutiny of the nomination papers by the Returning Officer took place on March 17, 1952. In all thirty nomination papers were filed which are Exts. 40 to 69. More than one nomination papers were filed for some of the candidates including the Petitioner. There is a prescribed form of nomination paper which is given in schedule II of the Representation of the People (Conduct of Elections and Election Petitions) Rules 1951. It is based on Rule 4 of the said Rules. Blanks of these forms were filled in by the candidates or their agents and were presented before the Returning Officer who, in this case, was Secretary of the Legislative Council. The form of nomination papers contains several columns. We are concerned in this case mainly with column 8. Reference will also be made to other columns at the proper place in order to elaborate our reasonings. In column 8—to use the actual words given therein—

Serial number of the candidate in the Electoral Roll of the Constituency in which his name has been included'

is to be given.

It appears that words 'the constituency in which his name has been included' were differently interpreted by those who filed the nomination papers. Majority thought that serial number in the electoral roll of the Legislative Assembly was to be given in this column but some thought that the serial number of the candidate in the Electoral Roll of the East Teachers' Constituency, which was a special constituency for election to the Legislative Council, was to be given. In the nomination papers (Exts. 40 to 65 and 67) the serial number of the candidate in the Electoral Roll of the Legislative Assembly is given whereas in the nomination papers (Exts. 66, 68 and 69) the serial number of the candidate in the Electoral Roll of the Teachers' Constituency is given. It appears that the Petitioner or his workers were not certain about the correct interpretation hence three nomination papers were filed on his behalf. In two serial number of the Assembly Constituency was given. In one, namely, nomination paper (Ex. 66) serial number of the Teachers' Constituency was given. Same was done in the nomination papers (Exs. 68 and 69) relating to Onkar Shankar Vidyarthi Respondent 10.

The Returning Officer at the time of scrutiny accepted all those nomination papers in which serial number of the Assembly Constituency was given and he rejected the other three nomination papers. The result was that all the nomination papers except three including two nomination papers of the Petitioner were accepted and three nomination papers including one of the petitioner (Ex. 66) were rejected.

Contention of the Petitioner was that the Returning Officer wrongly accepted some and improperly rejected other nomination papers. According to him this act of the said officer materially affected result of the election and, therefore, the matter came within the mischief of section 100 (1)(c) of the Representation of Peoples Act 1951. According to contesting respondents all the nomination papers in which serial number of the Assembly Constituency was given were rightly accepted by the Returning Officer and those (Exts. 66, 68 and 69) in which serial number of the Teachers' Constituency was given were properly rejected.

For the decision of the controversy it is necessary to look at the scheme and some provisions of the Constitution and of the Acts passed by the Parliament under the authority conferred on it by the Constitution.

Article 173 of the Constitution runs as follows:—

"A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he—

- (a) is a citizen of India;
- (b) is, in the case of a seat in the Legislative Assembly, not less than twenty five years of age and, in the case of a seat in the Legislative Council not less than thirty years of age; and
- (c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament."

A perusal of this Article shows that under that Article those who are citizens of India and are not less than 30 years old are qualified for being chosen as members of any Legislative Council of a State. The Article further authorises the Parliament to define other qualifications for membership. It may be noted that clause (c) of Article 173 enjoins prescribing by the Parliament of other qualifications. It is, therefore, clear that the qualifications must be defined by Parliament in clear and unambiguous terms and not by implication and by drawing conclusions after comparison of different provisions of different enactments.

The Representation of People Act 1951 was enacted to provide, *inter alia*, for the qualifications and disqualifications for membership of the State Legislature as is clear from its preamble. Part II of that Act is for 'Qualifications and Disqualifications' for Membership. Chapter I of that Part deals with 'Qualifications for membership of Parliament'. Chapter II deals with 'Qualifications for membership of State Legislature'. Section 5 of that chapter is for 'Qualifications for membership of a Legislative Assembly' whereas section 6 defines Qualifications for membership of a Legislative Council. Sub-section (1) of that section runs as follows:—

"A person shall not be qualified to be chosen to fill a seat in the Legislative Council of a State to be filled by election unless he is an elector for any Assembly Constituency of that State".

Now, reading Article 173 with section 6 aforesaid, it becomes clear that for membership of the Legislative Council of a State it is necessary that the candidate should be a citizen of India, should not be less than 30 years of age and his name must be included in the Electoral Roll of any Assembly Constituency of the State concerned. It necessarily follows that it is not at all necessary for a candidate of the East Teachers' Constituency that his name should be included in the Electoral Roll of that Constituency. If the name of the candidate appears in the Electoral Roll of any Assembly Constituency, he can stand for membership irrespective of the fact whether his name appears or it does not appear in the Electoral Roll of the constituency for which he stands. The language used in column 8 of the form of nomination paper referred to above is not at all in conflict with the view expressed above. It clearly supports that view. The point will further become clear if the language of column 8 is compared with the language of columns 10 and 14 which are meant for proposer and seconder. The result, therefore, is that the Returning Officer was right in accepting the nomination papers (Exts. 40 to 65 and 67) and that he was again right in rejecting the nomination papers (Exts. 66, 68 and 69).

During the course of arguments the learned counsel for the Petitioner referred to Articles 171 and 326 of the Constitution, to section 27 of the Representation of People Act 1950 and to sections 32, 33, 35, 36(2) and 62 of the Representation of People Act 1951. But all these provisions relate to the qualifications of the electors. The same have got nothing to do with the qualifications for membership. The point is so obvious that it is wholly unnecessary to further dilate upon and elaborate this point.

In view of what is said above we do not entertain any manner of doubt about the conclusion to which we have arrived. We are definite that the Returning

Officer properly accepted nomination papers (Exts. 40 to 65 and 67) and that he rightly rejected the nomination papers (Exts. 66, 68 and 69). We decide part (a) of issue 2 accordingly.

Issue 2(b).—Name of Sri H. B. Malkani Respondent 5 does not appear in the Electoral Roll of either East or West Teachers' Constituency. His name, however, appears in the Electoral Roll of the Assembly Constituency. Therefore in view of what is said above nomination paper of Sri Malkani was rightly accepted by the Returning Officer. Part (b) of issue 2 is consequently decided in the negative.

Issue 2(c).—Point raised in this part of the issue does not arise in view of the findings already recorded.

Issue 2(d).—This part of the issue is also decided in the negative for the reasons given above.

Issue 3(a).—This issue is based on the allegations contained in paragraph 11 of the petition. Voting in the constituency in question was by postal ballot as provided in Rule 69 of the Representation of People (Conduct of Elections and Election Petitions) Rules 1951. The ballot papers are to be sent to electors by the Returning Officer by post (Rule 65). Rule 67 lays down the method of voting by an elector who is to obtain the attestation of his signatures on the postal ballot papers either by a magistrate to whom the elector is personally known or to whose satisfaction the elector has been identified or by such other person as may be notified in that behalf by the Election Commission. Thus attestation of signatures of voters in the Teachers' Constituency was to be made either by a magistrate or by such persons as may be specified by the Election Commission. Under authority conferred to it by Rule 67 the Election Commission issued notification specifying the persons who could attest signatures of voters in the Teachers' Constituency. The Petitioner has filed a copy of that notification along with the petition. It is referred to therein as Ex. A2. Heads of educational institutions, *inter alia*, have been authorised to attest the signatures but the commission has imposed a restriction by enjoining that

"No such person who is either a candidate at such election or a person employed by or on behalf of, or otherwise working for a candidate in or about the elections shall be authorised to attest the signatures."

The Petitioner has filed some printed leaflets and appeals purporting to have been signed by good many heads of institutions issued in support of the candidature of Respondents 1 to 3 and 5. Copies of such appeals are filed with the petition and are marked as A3 to A9. Some of the supposed signatories of those appeals have also attested signatures of some of the voters on the ballot papers. Contention of the Petitioner was that by issuing the said appeals the signatories must be deemed to be working for the candidate for whom they issued the appeals within the meaning of the notification cited above and, therefore, the contention proceeded, attestation of signatures of electors on ballot papers by them made the vote cast by such elector invalid under Rule 92(c). There is no doubt about the fact that some of the heads of institutions who purport to have signed the appeals did attest signatures of some of the electors on the ballot papers. Therefore main question for consideration in this connection is whether by merely signing the appeals the signatories should be held to be working for the candidate in whose favour the appeals were issued. A further question that arises is as to whether those whose names appear in the appeals did really sign them.

Following signature slips have been attested by the following heads of institutions:—

Signature slips	By whom attested
Ex. 1. }	Sri M. R. Kidwai Principal, Gandhi Faiz-e-Am Degree College, Shahjahanpur.
Ex. 2. }	.
Ex. 27. } Sri B. C. Greenwold.
Ex. 28. }	...
Ex. 30.	... Sri Jai Deo Singh, Principal, Y. D. College, Lakhimpur.
	Sri Sheaukat Sultan, Principal, Shibli National College, Azamgarh.
Ex. 71.	... Srimati K. Sabarwal, Principal, Mahila College, Lucknow.
Ex. 70. J. J. Misra.
Ex. 72. Sri M. G. Misra, Principal, K. K. College, Lucknow.

Of the persons named above Sri Jai Deo Singh and Sri Shaukat Sultan purport to be signatories of the appeal Ex. 18 (A3 of the petition) which is in support of the candidature of Respondent 1, Srimati Sabarwal, Sri J. J. Misra and Sri M. G. Misra of appeal Ex. 24 (A6 of the petition) In support of Respondent 2 and Sri M. R. Kidwai and Sri Greenwold of appeal Ex. 4 (A4 of the petition) in support of Respondent 3.

As pointed out above two points are to be considered in this connection—first whether those who purport to be signatories did really sign the appeals and, secondly, whether mere signing of the appeals amounts to working for a candidate within the meaning of the notification referred to in the petition.

Out of the persons named above only Sri M. R. Kidwai was examined from the side of the Petitioner. What he stated was—

"I did not sign any appeal issued by Hirday Narain Singh and Rama Kishore Sharma in support of their candidature. It came to my knowledge that they had issued an appeal for their candidature without obtaining my signatures on the appeal. On the 20th of January, 1952, it was the convocation day of my college when Respondent, Sri Rama Kishore Sharma, came to me and asked me that he would issue an appeal for his candidature over my signatures and I said that I would have no objection. He had said that it would include my name among the signatories. After the formal appeal was got printed by him and issued I did not ask him why he had issued it without actually obtaining my signatures on the original."

The witness was confronted with a letter that he had sent to the Petitioner in reply to latter's letter. By that letter the witness had informed the Petitioner that he did not sign the appeal. After a perusal of that letter the witness said that as he had not actually signed the appeal nor did he peruse it at any stage he wrote to the Petitioner that his formal consent had not been taken. He further stated that he did not work for the election of Sri Rama Kishore Sharma Respondent in any manner.

It is clear from what is said and cited above that though Sri M. R. Kidwai should be held to have given his consent for appearance of his name in the appeal he cannot be said to be working for the candidature of Sri Rama Kishore Sharma Respondent No. 1.

Besides Sri M. R. Kidwai no others who attested signatures of voters on the ballot paper were produced by either party. There is no direct evidence that those persons did really sign the appeal and circulars issued in support of the candidature of Respondents 1 to 3.

During the course of arguments reference was made of the statements of Sri K. K. Joshi (R.W. 4) and Sri Maheshwar Panday (R.W. 8) both of whom along with one more were responsible for the drafting, printing and distribution of appeal, Ex. 24 (A6 of the petition). They stated that the appeal was actually signed by some of the persons named therein and that consent of others had been taken for inclusion of their names in the appeal. It is manifest from the statements of these witnesses that the supposed signatories did not sign in their presence. However relying on what these witnesses stated it may be said that in all probability signatures of some were actually taken while others consented to the inclusion of their names in the appeal. But it is at the same time certain that supposed signatories consented to the inclusion of their names only at the instance of others. Because such a request was made they agreed.

This brings us to the next point. It is to be seen whether what the signatories did brought the matter within the clutches of the Notification referred to in the petition. It may be noted in this connection that the actual notification of the Election Commission has not been produced before us. What is produced before us is the notification issued by the Chief Electoral Officer, U. P.. In paragraph 3 of that notification reference has been made of some notification of the Election Commission. Hence it cannot be said with certainty what the contents of the last mentioned notification were. However as this matter was not raised at the bar we presume that such a notification was issued by the Election Commission.

The said paragraph 3 has been cited elsewhere in this Judgment. It was conceded that the persons concerned could not be said to have been 'employed by or on behalf of a candidate'. It is, therefore, to be seen if those persons can be said to be 'working for a candidate' because they had signed an appeal issued by some interested person in support of the candidature of certain candidate. It has come in evidence that one of the persons concerned, namely, Sri M. R. Kidwai, at least gave his consent only by way of courtesy. There is nothing in evidence in respect of other persons showing that there was any exercise of their own volition or individual judgment on the part of the signatories. It appears that they were asked to sign and like Sri M. R. Kidwai they consented by way of courtesy. There-

is not an iota of evidence on record to show that the persons concerned did anything, however insignificant the same might be, in the way of supporting the candidature of any person. Under the circumstances it is impossible to hold that mere giving of consent to the inclusion of their names in the appeal can be construed to mean that in doing so the persons concerned were working for any candidate.

Therefore in view of what is said above Issue 3(a) is decided in the negative.

Issue 3(b).—As shown above some of the persons given in list A of the petition did attest signatures of the voters on the ballot paper. In view of what is said above they were authorised to attest the signatures. Case of some of the persons concerned has been dealt with above. There remain two signature slips. Signature of the voter on the slip (Ex. 29) was attested by Sri Subhadra Jha Librarian of the Sanskrit College, Banaras and that on the slip (Ex. 73) was attested by Sri Parbhu Lal Shukul, Principal-in-charge of the Mahatma Gandhi Inter College. It was contended that the Librarian of the Sanskrit College, Banaras, was not head of an educational institution as defined in the notification. It was also contended that similarly a Principal-in-charge, could not be placed in that category. A Principle-in-charge of the office temporarily is, in our opinion, as much a head of an educational institution as Principal-in-charge of the office permanently. Therefore attestation of the signatures by the former does not at all invalidate the vote.

As regards Librarian of the Sanskrit College, Banaras he is a gazetted Officer within the meaning of the said notification as appears from the civil list of the U.P. Government corrected upto January 1, 1952, page 517. It appears from that entry that Sri Subhadra Jha M.A., D.Litt. (Paris) was employed as Librarian of the aforesaid College on January 27, 1951, on a two years' probation and was drawing on October 19, 1951, a salary of Rs. 550. Therefore he was without doubt authorised to attest the signatures.

We hold in the result that all those who attested the signature slips were authorised to do so within the meaning of the notification relied on by the Petitioner. Issue 3(b) is decided accordingly.

Issue 3(c).—In view of what is held above we find that no vote is proved to have been improperly accepted by the Returning Officer.

The question as to whether result of election was materially affected by improper acceptance of any vote does not arise.

Issue 4.—This issue must be decided in the negative. The said notification was issued by the Election Commission under authority conferred on it by clause (e) of Rule 67 of the Representation of People (Conduct of Elections and Electoral Petitions) Rules 1951.

Issue 5.—Before coming to the question at issue direct it is necessary to enter into the history of activities of the employees of the educational institutions of our State. There is an old association known as U.P. Secondary Education Association (shortly known as UPS E A) which is in existence from over 25 years and is recognized by the Government. In 1945 another association named U.P. Assistant Teachers' Association (shortly known as UPATA) was started. This body could not obtain recognition from the Government. It, however, was working on the same lines as the first mentioned body.

In 1947 there was the move to hold a Province wide strike of teachers in order to press the Government to grant certain amenities to the teachers. In order to achieve this object a body was carved out of the two associations named above. This body was known as U.P. Secondary Education Teachers' Organisation (U.P. SETO). The proposal of strike was considered by the last mentioned body in which representatives of the ministerial staff of the educational institutions were also included. The Council of Action of that body held a meeting in which resolution for postponement of the strike was moved and passed. Though officially the strike was postponed, teachers of Lucknow and of some other places condemned the resolution of postponement and staged a strike which ultimately fizzled out. We are not concerned with the subsequent history except that the postponement of strike divided the teachers in two groups—one which thought that postponement of strike was betrayal of the cause of teachers while the other group considered that postponement was in the best interest of that body.

Sri Har Gopal Rai, who was examined in this case from the side of the Petitioner, was General Secretary of the UPATA. He wrote letter (Ex. B) on March 30, 1947, to Respondent 2 in which he condemned the action of those who had postponed the strike. Ex. C is copy of the resolution passed on March 23, 1947, by teachers in which those who had voted for postponement of strike were called

as betrayers of the cause. This resolution was moved by Sri Hari Gopal Rai (P.W. 2). Ex. D is the letter, dated March 28, 1947, issued by UPSTO to teachers in which postponement of strike was called a 'treacherous action'. Ex. L is letter, dated March 28, 1947, written by T. R. Bahal in reply to a letter of the Petitioner in which it was said that 'Pacholl stabbed us at the back'. In paper (Ex. 6) it was said with reference to postponement of strike that 'our cause has been betrayed'. Reference to the aforesaid papers shows that there was acute difference of opinion about postponement of strike and responsible persons possessed such strong feelings on the point that they had to express themselves in the strong language cited above.

The Petitioner belongs to and was a candidate on behalf of UPATA. He was also one of those who had voted for postponement of the aforesaid strike. The Respondents 1 to 3 were candidates set up by UPSEA.

During the election in question considerable propaganda was carried on by each party in course of which pamphlets were issued and circulars were distributed. The Petitioner takes exception to two appeals issued in support of the candidature of Respondent No. 2. According to the Petitioner one passage in each appeal contained false statements casting reflection on his personal character and conduct which, according to him, amounted to the major corrupt practice as defined in section 123(5) of the Representation of People Act, 1951.

Both the passages to which exception has been taken refer to the postponement of strike. The first passage is

"Aur savdhan rahiye un swarthon say jinon ne 1947 men Prantiya Teachers' strike ke khilaf vote dekar ap ke kam ko dhakka pahunchaya".

When translated it will be something like this:

Beware of those selfish persons who caused set back to your cause by giving vote against the provincial teachers' strike.

Nobody much less the Petitioner has been named in this appeal. Action of those who voted for postponement of strike is disapproved in the above passage. It no doubt indirectly refers to the Petitioner also. The passage, however, does not contain anything which may be said to be an attack on the personal character and conduct of the Petitioner. It is the thing done by the Petitioner in his public capacity which has been criticised and not his personal character. Therefore this passage does not Attract the provisions of section 123(5) of the aforesaid Act.

The other passage to which exception is taken by the Petitioner is as follows:—

"San 1947 men strike ke asphal bananey ki zummendari UPSETO namak sanstha par thi jis ka sangathan ust samai hua tha aur strike ke vipakash men uski Council of Action nimnikhit sajjano ne vote diya tha".

When translated it is as follows:—

In 1947 responsibility of making strike fruitless was on the body named UPSETO which was formed at that very time and following gentlemen of its Council of Action had voted against strike.

Messrs. J. S. PACHOLL,

Candidate set up by A.T.A. Shahjahanpur.

In this appeal the Petitioner has been named but there is nothing in the above passage which by any stretch can be said to be casting any reflection on the personal character or conduct of the Petitioner. Some were of opinion that postponement of strike was an unwise action. Others thought otherwise. This difference of opinion can not be said to have in any way marred the prospects of election of the Petitioner.

One Deoki Nandan was produced to prove effect of the aforesaid passages on the electors. He stated that during his canvassing tour for the Petitioner voter told him that because of these appeals they were not going to vote for him. This sort of secondary evidence is wholly inadmissible for proving this fact. Voters themselves should have been produced.

We gave our earnest consideration to the matter in issue. We find that the passages to which exception is taken by the Petitioner do not at all contain anything which may amount to corrupt practice within the meaning of section 123(5) of the Act. Issue is decided in the negative.

Issue 6.—This issue is based on paragraph 12(b) of the petition. It was alleged that the appeal copy of which is filed with the petition and is marked therein as P-2 purporting to have been issued under the signatures of 37 persons was in fact not signed by them. Particular reference was made to Sri M. R. Kidwai and Captain Loomba. It was alleged that they never signed the said appeal.

Paper P-2 is filed again with the petition in connection with the matter already discussed. It is marked there as A-4. This document has been proved and is marked as Ex. 4.

As discussed elsewhere it can not be said that Sri M. R. Kidwai was wrongly included among the signatories. He had given his consent for inclusion of his name in the appeal though till then the appeal had not been drafted. Subsequent to the issue of the appeal he did not take any steps challenging the inclusion of his name. He thought if the name had been included let it be there. This is what he himself said when in the witness box. Therefore inclusion of his name in the appeal was justified.

As regards Captain Loomba there is nothing on the record to show that his name was included without his consent.

The Respondent has given evidence showing that the appeal (Ex. 4) was signed by some of the persons named therein and that consent of the rest was taken for inclusion of their names in the appeal.

Therefore, in view of what is said above, we find that the Petitioner failed to prove that names of Sri M. R. Kidwai and of Captain Loomba were included in the appeal without their consent. We decide the issue in the negative.

Issue 7(a).—This is based on paragraph 13 of the petition. It is alleged in that paragraph that the Respondent had submitted false return of election expenses. Details of this allegation are given in list C attached with the petition. A perusal of the said list shows that the Petitioner's contention was that the postal charges amounting to Rs. 583/10/6 were much less than the actual postal expenses. The reasoning was that the said Respondent issued six appeals all filed with the petition and marked C1 to C6. According to the Petitioner all these appeals were sent by post and the printed copies numbered about 23,000. It was alleged that about Rs. 1,000/- would have been spent in sending these papers to electors by post. Thus, according to the Petitioner, if Rs. 1,000/- is added in place of Rs. 583/10/6 already shown the sum total of election expenses will rise to Rs. 3,253/10/- which exceeds the prescribed maximum by Rs. 253/10/-.

It was, therefore, for the Petitioner to prove that about 23,000 copies of circulars and appeals were sent by post.

The evidence produced before us in the course of proceedings of this case was that there were in all 5,204 electors in the East Teachers' Constituency out of whom about 1,000 belonged to Jaunpur or Banaras. The first appeal was sent by post to all the electors individually except those of the two places mentioned above to whom the same was delivered by hand. Postal charges would have been Rs. 197/1/- for 4,204 electors. After this preliminary appeal election work was organised at different centres where some of the supporters of the candidate began to work as his agents in the sense that the printed literature used to be sent to them who used to distribute the same in their town. Thus the postal expenses were much reduced in sending the subsequent appeals. There is no definite and clear evidence on record in rebuttal of the evidence of method of distribution of the election circulars etc. The Petitioner failed to establish by cogent evidence that 23,000 copies of appeals were distributed and that the same were sent by post.

When an incriminating allegation is made in election cases it is the duty of the Incriminator to prove by satisfactory evidence that the illegality was in fact committed. In this case contention of the Petitioner is based on surprise and speculation. Evidence produced by him does not stand the test. We hold, therefore, that the Petitioner failed to prove that the return of election expenses submitted by the Respondent 1 was false. Issue 7(a) is decided in the negative.

Issue 7(b).—In view of the above finding this part of the issue has become redundant. No finding is necessary on this part of issue.

Issue 8(a).—This issue is based on paragraph 14(a) of the petition as elaborated in list D thereof.

In elections good many circulars, letters and pamphlets are printed, published and distributed in support of different candidates who stand for election. It has always been necessary that the names of printers and publishers of such letters and circulars etc., must appear on the same. In the past omission of such names

constituted a corrupt practice but the Representation of People Act, 1951 classed it as an illegal practice under sub-section (3) of section 125 which lays down that.

"The issuing of any circular, placard or poster having a reference to the election which does not bear on its face the name and address of the printer and publisher thereof"

shall be deemed to be illegal practice for the purposes of the said Act.

In list D of the petition papers D1 to D7 (copies filed with the petition) have been referred to. These are appeals etc. issued by or in support of the Respondents 1 to 3 and 5. All these papers are printed ones but do not bear the names of printers and publishers. D1 was issued by Respondent 1 and D4 by his agents. D2 and D3 were issued by Respondent 2 and D5 by Respondent 3. These papers have been proved and D1 to D5 are Exts. 23, 24, 25, 15 and 26 respectively.

There is no doubt about the fact that the name of printer and publisher does not appear on these papers. Evidence, however, was produced from the side of the Respondents to show that the omission was purely accidental and not at all intentional. Men of the different Presses at which these papers were printed have been produced. They frankly admitted that they were responsible for the omission. Their explanation was that under the Press law with which they were ordinarily conversant did not require that the name of printer and publisher should necessarily be printed by them on such circulars, appeals and letters as were in question in this case and they were quite ignorant of the provisions of the Representation of People Act 1951. In our judgement the explanation given above is perfectly correct. In fact it was the duty of those who got those papers printed to direct men of the different Presses that the names of the printers and publishers must necessarily be printed. This was not done. It may, however, be noted that there is independent and reliable evidence to the effect that those who got the relevant papers printed did not direct men of different Presses not to print the names of the printers and publishers. It appears certain that they too were quite ignorant of the provisions of law cited above. This is true that ignorance of law is no excuse but at the same time it must be taken into consideration that those who got the relevant papers published had no ulterior motive in circulating those papers without printers and publishers' names thereon. Omission was not at all actuated by any such motive as might have placed one party at an advantage and the other party at a disadvantage. There is no evidence to prove any bad faith. There is no suggestion either from the side of the Petitioner on this point.

On an examination and due consideration of the evidence on the point, we are bound to record the finding of fact to the effect that omission of printers and publishers' names from papers D1 to D5 of the petition was purely accidental, that it was not intentional and lastly that it was not actuated by any ulterior motive.

A distinction, however was drawn at the time of arguments by the learned counsel appearing from the side of Petitioner between illegal practice and corrupt practice. It was argued that in case of corrupt practice question of motive comes in whereas in case of illegal practice, according to the Petitioner's learned counsel, motive played no part. He argued that omission of printers and publisher's names was enough for bringing the case within the ambit of sub-section (3) of section 125 of the Representation of People Act and that question of ulterior motive or bad faith was not at all to be gone into. There is no doubt that there is force in this argument but we, at the same time, feel that such an interpretation as pressed from the side of the Petitioner will make the provisions of law too technical. Once it is found that the omission took place purely and wholly because of ignorance of the provisions of law without any ulterior motive, it appears impossible to hold the Respondents guilty of the illegal practice. If the Respondents, because of the result of ignorance of law on the point, would have even unintentionally drawn any benefit from the omission to the detriment of the interest of the Petitioner, our finding would certainly have been different. However, under the circumstances given above, we hold that no illegal practice within the meaning of sub-section (3) of section 125 was committed by the Respondents. We decide issue 8(a) in the negative.

Issue 8(b).—In view of the above finding it is unnecessary to deal with this part of the issue.

But even if it be granted that the illegal practice as alleged was committed by the Respondents, it is to be seen as to what consequences would have followed.

This brings us to the provisions of section 100 relevant part of sub-section (2) of which runs as follows:—

'If the Tribunal is of opinion that the election of a returned candidate has been procured or induced, or the result of the election has been materially affected, by any corrupt and illegal practice, the Tribunal shall declare the election of the returned candidate to be void.'

It is clear from the above cited provisions that any illegality as defined in section 125(3) if committed in the course of election should be taken notice of by the Tribunal only when it is proved that the illegality helped in procuring or inducing success of the Respondents 1 to 3 or that the result of the election was materially affected thereby.

We have held above in clear and unequivocal terms that there is no evidence on the record nor was there any suggestion made from the side of the Petitioner proving or suggesting that the omission of printers and publishers' names from papers D1 to D5 directly or indirectly helped Respondents 1 to 3 in securing their success. It was also not proved or suggested that the said omission in any way affected the result of election. Hence even if it be granted that the illegality was committed, we would decide this part of the issue in the negative.

Before closing our findings on issue 8 we may refer to a point raised by the learned counsel for the Petitioner during arguments.

According to him, the illegal practices were defined in section 125. Consequences of commission of illegal practice were defined in section 100(2)(a) and also in section 140 of the Act. According to the first-mentioned provision election of that candidate would be declared void who committed illegal practice. But same provision lays down that the election could be avoided only when it is proved that the illegality helped in procuring or inducing success or that the result of the election was materially affected thereby. This means that if the condition aforesaid is not proved election of the successful candidate will not be avoided because of the illegality.

But no such condition attaches to the applicability of section 140. Under that section once it is found that the illegality was committed at the election provisions of section 140 must come into play and the elected candidate who had committed illegality must be disqualified from membership for a specified period. Thus a case may arise in which commission of illegality as proved but it is not proved that the same helped in the success of the candidate, in such a case the election of the successful candidate would not be avoided but at the same time he would be disqualified from membership under section 140 of the Act. This seems to create an anomalous situation. We are, however, not called upon to deal with this point because of our finding that no illegality was committed in this case.

Issue 9.—Contention of the Petitioner was that the Electoral Roll of the East Teachers' Constituency was wrongly prepared because it contained repetition of the name of the same person more than once. It was alleged that taking advantage of recurrence of their names some of the electors voted more than once.

First part of the allegation is true. The Electoral Roll of the East Teachers' Constituency is on the record. It shows that name of some of the electors has been given in the Roll more than once. We suggest that the Roll should be corrected in order to remove this defect.

As regards the second point, there is no evidence to show that any elector voted more than once.

Therefore first part of the issue is decided in the negative.
Other parts of the issue do not arise.

Issue. 10.—As we are going to dismiss the petition, consideration of the point raised by this issue is not called for.

Issue 11.—In view of our findings recorded above, we find that the Petitioner is not entitled to any relief.

Before closing the judgement it may be pointed out that one of the reliefs claimed by the petitioner was against Respondent 5. It was prayed that he should be declared disqualified. As pointed out above, Respondent 5 did not turn up. Hence naturally the case proceeded against him *ex parte*. It is, however, to be noted that the allegations made by the Petitioner against him have not been proved at all. Hence we find that the Petitioner is not entitled to any relief against that Respondent as well.

O R D E R

The petition is dismissed with Rs. 100/- as costs payable to Respondents 1 to 3 in equal shares.

D. N. Roy, Chairman

A. SANYAL, Member.

M. U. FARUQI, Member.

The 23rd May, 1953.

Annexure "A"

BEFORE THE ELECTION TRIBUNAL AT FAIZABAD

PRESENT:

Sri D. N. Roy—Chairman.

Sri A. SANYAL—Member.

Sri M. U. FARUQI—Member.

ELECTION PETITION No. 8/331 OF 1952.

Jawahar Shankar Pacholi—Petitioner.

Versus

1. Sri Hirday Narain Singh.
2. Sri Balbhadr Prasad Vajpal.
3. Sri Ram Kishore Sharma.
4. Sri Murldhar Srivastava.
5. Sri H. B. Malkani.
6. Sri Ram Balak Shastri.
7. Sri Girja Dayal Srivastava.
8. Sri Deoki Nankan.
9. Sri Hari Swarup.
10. Sri Onkar Shankar—Respondents.

ORDER

In this case a preliminary objection was raised to the effect that the petition was barred by time.

The petition was presented before the Election Commissioner under section 81 of the Representation of the Peoples Act, 1951, on August 9, 1952. The commission after due scrutiny under section 85 sent the petition to this Tribunal for disposal under section 86.

Sri Jawahar Shankar, the petitioner, along with respondents stood for election as a candidate for the U.P. East Teachers' Constituency for election as a member of U.P. Legislative Council from which constituency three members were to be elected by single transferable votes.

Respondents 1 to 3 were declared elected on April 29, 1952. The remaining respondents as also the petitioner were defeated.

The result of election was declared and published by the Returning Officer in the U.P. Gazette Extraordinary dated April 29, 1952, and was notified by the prescribed authority in the U.P. Gazette Extraordinary dated May 6, 1952, under section 75.

Notifications regarding the notice of the dates of filing the return of the election expenses of respondents Nos. 1 to 4, 6 and 8 to 10 as also of the petitioner were made on different dates under Rule 113 of the Representation of the Peoples (Conduct of Elections and Election Petitions) Rules, 1951. But the said notifications regarding Respondents 5 and 7 were not published at all. Those published were as follows datewise:—

On June 7, 1952 of respondent No. 3.

„ „ 14, 1952 „ „ 8.

„ „ 21, 1952 „ „ 2 and 4.

„ July 5, 1952. „ „ 1, 6, 8, 10, and the petitioner.

The above details are important particularly the dates as will appear later on. The details are admitted by both sides except that the respondent No. 1 did not admit the dates other than his own but the notifications having been published in the official Gazette Judicial notice can be taken thereof and the dates are taken as correct.

Now, before applying the relevant provisions of law to the facts before us it is proper to notice what the provisions are regarding limitation in respect of the petitions before the Election Tribunal. The law on the point is laid down in section 81 of the Representation of Peoples Act, 1951, and in Rule 119 of the Representation of the Peoples (Conduct of the Election and Election Petitions) Rules, 1951.

Section 81 directs that an election petition may be presented within such time as may be prescribed but not earlier than the date of publication of the name or names of the returned candidate or candidates at such election under section 67. The time is prescribed in Rule 119 of the Representation of Peoples (Conduct of Election and Election Petitions) Rules, 1951.

The said Rule 119 runs as follows:—

"An election petition calling in question an election may,—

- (a) in case where such petition is against a returned candidate, be presented under section 81 at any time after the date of publication of the name of such candidate under section 67 but not later than fourteen days from the date of publication of the notice in the official Gazette under Rule 113 that return of election expenses of such candidate and the declaration made in respect thereof have been lodged with the Returning Officer; and
- (b) in case where there are more returned candidates than one at an election and the election petition calls in question the election as a whole, be presented under the said section 81 at any time after the date of publication of the names of all the returned candidates under section 67 but not later than sixty days from the expiration of the time specified in sub-rule (1) of Rule 112 for lodging of the returns of election expenses of those candidates with the Returning Officer."

An analysis of this rule will show that the first date for filing an election petition is the same in sub-rule (a) and in sub-rule (b) but the last date differs. According to contesting respondents sub-rule (a) applies and according to petitioner sub-rule (b). It is conceded by either party that if sub-rule (a) applies the petition was presented beyond time and if sub-rule (b) applies it was presented within time.

To revert now, to the pleadings of the parties, paragraph 18 of the petition runs as follows:—

"That according to Rules every candidate who stood for election from this constituency was required to file his return of election expenses by June 13, 1952 and as such this election petition is within time."

All the contesting respondents did not admit contents of this paragraph of the petition but none except respondent No. 1 said anything about limitation in that part of his written statement which is headed as "additional pleas". Respondent No. 1, however, pleaded further in paragraph 30 of his written statement that "the petition was barred by time and was liable to be rejected". It was not pleaded in clear terms as to how the petition was barred by time.

At the time of arguments before us the learned counsel for the respondents urged that—

- (1) sub-rule (b) did not apply because it applied where, *inter alia*, election as a whole is questioned and in the case before us the petitioner did not question the whole election but wanted that eliminating all others he himself should be declared as elected, and
- (2) sub-rule (a) applied if the singular in the sub-rule be taken to include plural as was provided in the General Clauses Act.

Argument of the learned counsel for the petitioner was that sub-rule (a) did not apply at all because the same contemplated the case where there was only one returned candidate and that if the provisions of the General Clauses Act as argued were to be applied such results would follow as were not contemplated by law. According to the petitioner's learned counsel sub-rule (b) applied in the case.

We are definitely of opinion that sub-rule (a) was not meant for cases where there were more than one returned candidates as defined in clause (f) of section 79 of the Representation of Peoples Act, 1951. In the present case there are three

returned candidates. Last date for filing election petition under sub-rule (a) is the date of publication in the official Gazette of notice under Rule 113. Such date can be different in case of each returned candidate and it is actually different in the present case as is clear from the table given above. If the interpretation of the learned counsel of the respondents is accepted, as many as three petitions were to be filed questioning the very same election and deposits were to be made three times and all the other requirements of law were to be observed as many times. This cannot by any means be the intention of the Legislature.

Reference of the provisions of the General Clauses Act is also out of place. 'Singular' will certainly include 'plural' if the Legislature so intends. In this case it is clear that this could not be the intention of the Legislature. It may be noted that addition of sub-rule (b) itself clearly indicates that provision of the General Clauses Act cannot be applied to sub-rule (a).

Therefore, for reasons given above application of sub-rule (a) is wholly out of question. Thus there remains only sub-rule (b) which alone must be held to apply unless it be assumed that the Legislature left a lacuna in which the present case fell but neither such an assumption can be made nor is it called for.

It was argued that for application of sub-rule (b) two conditions were necessary first that there should be more than one returned candidates and secondly that the election petition should call in question the election as a whole. In the present case there are without doubt more than one returned candidates. Hence that condition is fulfilled. But, it was argued, the relief's claimed clearly showed that the election as a whole was not questioned.

Reply of the petitioner's learned counsel was that though the relief for such declaration was not claimed in clear terms, perusal of the whole petition would show that petitioner wanted to question the whole election. We were taken through the petition. We are unable to accept the contention of the petitioner's learned counsel. The petitioner clearly wants declaration in his own favour by eliminating others. This being so, it cannot be held by any stretch of reasoning that the whole election was questioned by the petitioner.

We, however, hold that sub-rule (b) applies in this case not only because of the non-applicability of sub-rule (a) but also because, according to our interpretation, fulfilment of any of the two conditions mentioned above will make this sub-rule applicable. The only difficulty in the acceptance of the last mentioned interpretation is the use in the said sub-rule of "and" between the sentences "where there are more returned candidates than one at an election" and "the election petition calls in question the election as a whole". If "and" is used in the conjunctive sense the sub-rule becomes inapplicable but if it is used in place of "or" it would wholly apply to the facts of the present case.

From Webster's new International Dictionary (1932 Edition) under word "and" it appears that this word is not confined to the conjunctive use only and that it is used in other sense as well so much so that sometimes it is used in place of "or". The relevant citation is as follows:—

"'And' is very frequently used where accurate and proper expression requires the word 'or'; in the legal construction of language, either word will be treated as if it were the other whenever this construction is plainly required to give effect to the intention of the person using it; thus in a bequest to 'a person and her bodily issue', 'and' may be read as 'or'; in a law providing that certain cities may tax property 'taxable for State and country purposes', 'and' may be construed as 'or'. Such use of the word 'and', although common, is improper....."

Again the following from the Law Lexicon of British India compiled and edited by P. Ramanatha Aiyar (1940 Edition) under heading 'and' page 67 column 2:—

"The word 'and' has generally a cumulative sense requiring the fulfilment of all the conditions that it joins together, and herein it is the antithesis of 'or'. Sometimes, however, even in such a connection, it is, by force of a context, read as 'or'."

The last mentioned author has cited some English enactments and cases where-in 'and' is used meaning "or". He has also cited the case of Chandra Nath Bagchi Vs. Nabadwip Chandra Dutt and others reported in A.I.R. 1931, Calcutta 476 (at 478) which was decided by Bench consisting of Rankin C. J. and Ghose J. In this case 'and' in a consent decree was held to mean 'or'.

The same author has cited the case Chairman of the Howrah Municipality Vs. Khetra Krishna Mittu cited as I.L.R. 33 Calcutta 1290 at 1304. This case was also decided by a Bench consisting of Mookerji and Rampini JJ. While interpreting section 30 of the Bengal Municipal Act, it was held that two phrases used in that section and joined with 'and' must be taken distributively and not collectively.

Now applying what is cited above to the facts of this case, it is abundantly clear that 'and' used in the sub-rule must necessarily be taken to mean 'or' otherwise meaning and effect of the provision will become absurd.

Our conclusion would remain unaltered even if we construe the word "and" in rule 119(b) in a conjunctive sense because in that event, we would interpret the words "the election petition calling in question the election as a whole" as meaning, "calling in question the election of the returned candidates as a whole".

We, therefore, hold that sub-rule (b) applies in this case.

For computing limitation in this case date of declaration in the official Gazette of the names of the elected candidates under section 67 aforesaid is the starting point. In this case such declaration was published on May 6, 1952. Time specified under sub-rule (1) of Rule 112 is of 45 days. This comes to June 20, 1952. Petition could be filed within 60 days of the last mentioned date i.e. upto August 19, 1952. This petition was filed on August 9, 1952, hence it was well within time. We hold accordingly.

D. N. Roy, Chairman.

A. SANYAL, Member.

M. U. FARUQI, Member.

The 24th January 1953.

[No. 19/331/52-Elec.III/8223.]

S.R.O. 1128.—Whereas the election of Sardar Balwant Singh of Village and P.O. Chanarthal Kalan, Tehsil Sirhind, as a member of the Legislative Assembly of the State of Patiala and East Punjab States Union (now dissolved) from the Sirhind constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLII of 1951), by Shri Gurdeep Singh of Village Kotla Bajwara, Tehsil Sirhind, District Fatchgarh Sahib;

AND WHEREAS, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Sections 86 and 87 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, THEREFORE, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, KAPURTHALA AT PATILIA

V. B. Sarwate—Chairman.

S. B. Kartar Singh—Member.

Jai Ram Saxena—Member.

ELECTION PETITION NO. 167 OF 1952

Gurdeep Singh S/o Iqbal Singh, village Kotla Bajwara, Tehsil Sirhind, District Fatchgarh Sahib, PEPSU, Petitioner.

Versus

1. S Balwant Singh S/o Jamiat Singh, V. & P.O. Chanarthal Kalan, Tehsil Sirhind.
2. Darbara Singh S/o Prem Singh, village Sondha, Tehsil Sirhind.
3. Gurbax Singh S/o Jodh Singh, village Ajnaur, Tehsil, Rajpura.
4. Joginder Singh S/o Harnam Singh, village Talanian, Tehsil Sirhind.
5. Taraqi Lal S/o Dhan Raj, Advocate, Sirhind.
6. Balbir Singh S/o Gurcharan Singh, village Talanian, Pleader, Bassi.
7. Nirpinder Singh S/o Harcharan Singh, Pleader, Bassi.
8. Jagan Nath S/o Ram Pati, village and Post Office Sirhind Mandi.
9. Sadhu Rai. S/o Daulat Ram, village and Post Sirhind Mandi.
10. Hari Kishan S/o Ram Partap, village Sanipur, P.S. Sirhind, Tehsil Sirhind.
11. Gurbachan Singh S/o Dalip Singh, village Sangatpura, Sirhind Tehsil.
12. Mathra Dass S/o Salig Ram, Prop. Krishna Oil Mills, Sirhind Mandi.

13. Shakti Parshad S/o Atma Ram of Bassi, P.O. Bassi.
14. Surjit Singh S/o Hukam Singh Singh village Sangatpura P.S. Mulepure. - Tehsil Sirhind.
15. Ram Parshad S/o Sada Nand V. & P. O. Bassi—*Respondents.*

ORDER

DELIVERED ON 25TH MAY, 1953

The petitioner in this case is an elector in the Sirhind Constituency of PEPSU Legislative Assembly. He presented this petition for a declaration of the election of the respondent No. 1 S. Balwant Singh, from the Sirhind Constituency to Pepsu Legislative Assembly as void on the ground of the improper rejection of the nominations of the respondents 6 and 7 by the Returning Officer. The Respondents to the petition had all filed their nomination papers but the nominations of the respondents 6 to 15 were rejected by the Returning Officer with the result that respondents 1 to 5 only remained in the contest.

There was another petition by the respondent No. 13, Shakti Parshad, for declaring this election void on the ground of improper rejection of his own nomination. That petition has been disposed of on 26th February 1953 with the finding that the rejection of his nomination was improper and the election was wholly void. In view of that declaration already given, the parties here are agreed that as no further relief than already granted in that case is being claimed in this case the proceedings herein have become infructuous. We accordingly dismiss this petition as infructuous and direct that the costs will be borne by the parties as incurred.

PATIALA,
The 25th May, 1953.

(Sd.) V. B. SARWATE, *Chairman.*(Sd.) KARTAR SINGH, *Member.*(Sd.) JIA RAM SAXENA, *Member.*

[No. 19/167/52-Elec. III/8226.]

S.R.O. 1129.—WHEREAS the election of Shri Shri Niwas Tiwari, son of Shri Mangal Deen, resident of Teoni, Tahsil Sirmour, District Rewa, as a member of the Legislative Assembly of the State of Vindhya Pradesh from the Mangawan constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Lal Yadavendra Singh, son of Shri Lal Raghubar Singh, resident of Maro, Tehsil Sirmour, District Rewa.

AND WHEREAS, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its Order to the Commission;

Now, THEREFORE, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, V. P. REWA

ELECTION PETITION No. 1/74/1952.

Lal Yadavendra Singh s/o Lal Raghubar Singh r/o. Maro Tahsil Sirmour, District, Vindhya Pradesh—*Petitioner*

Versus

1. Shri Niwas Tewari s/o Mangal Deen r/o Teoni. Tahsil. Sirmour, Distt. Rewa.
2. Ravendra Singh s/o Vijaya Raj Singh r/o Tikuri Tah. Sirmour, Distt. Rewa.
3. Saraswati Pd. s/o Parmeshwar Deen r/o. Jorouth Tah. Sirmour Distt. Rewa.
4. Shukh Deo Singh r/o Mardhi. Tah, Sirmour, Distt. Kashi Nath r/o Beohara Tahsil Sirmour, Distt. Rewa
6. Rukmani Raman Pratap Singh s/o Rashiraj Singh r/o. Lalgaon Tahsil Sirmour, Distt. Rewa—*Respondents.*

CORUM:

1. Sri E. A. N. Mukarji, M.A., LL.B.—*Chairman.*
2. Sri G. L. Shrivastava M.A., LL.B.—*Member:*
3. Sri Uma Shankar Prasad B.A.B.L.—*Member.*

FINAL REPORT.

Shri Niwas Tewari (Respondent No. 1), was elected to the Vindhya Pradesh Legislative Assembly from Mangawan constituency, district Rewa, at the last election. His election has been challenged by all Yadavendra Singh (Petitioner) on several grounds.

2. It is alleged in the petition that seven persons filed nomination papers from this constituency, and out of these persons Shrinivas Tiwari was, at that time, below 25 years of age, and hence he was not qualified to be a candidate for the Legislative Assembly. In support of this allegation it is stated that, according to entries in the Government of India Gazette, dated 28th July, 1944, in which the results of the High School Examination were published, the date of birth of Shri Niwas Tiwari was shown as 1st June 1927. Similarly his age given in the Scholar's Register of B.A. and Law classes in the Durbar College, Rewa is based on his date of birth as being 1st June, 1927.

3. It is alleged by the Petitioner that these admission forms giving the date of birth, were filled in by Respondent No. 1 himself. Moreover the ages of the Respondent No. 1 and his elder brother Tirath Prasad are both entered in the Municipal Board Voters List as 25 years. This is obviously a mistake because these brothers are not twins and they could not be of the same age.

4. In the Electoral Roll of the Legislative Assembly, as initially published, the age of Respondent No. 1 was shown as 24 years. Later on it appears that this was corrected, but petitioner alleges that this was done without regular notice.

5. The election is also challenged on the ground that various irregularities took place during the election. They are as follows:—

6. On 11th January, 1952, when polling took place at Teoni, petitioner's polling agents were not allowed to take part although they had put in properly filled up forms and they were thus prevented from affixing their seals on the ballot boxes or from objecting to bogus voters.

7. Similar allegations are made about Chhiuda Polling Station.

8. It is further alleged that, on 11th January, 1952, at Gangeo Polling station, the ballot boxes were not of the proper colour, which was red, but were of green colour, with the result that petitioner's voters were misled.

9. That in Gurhawa Polling Station, where polling took place on 15th January, 1952, the polling booth was suddenly changed from the house of Ganesh Kunwi to that of Rampratap Singh and this fact prejudiced petitioner's cause. A similar change is said to have been made at Diawaya Polling Station.

10. It is also stated that Respondent No. 1 raised the issue of Brahmins Vs. Kshatrias, and thus aroused communal animosity.

11. Respondent No. 1 is also charged with the corrupt practice of bribery in as much as he is said to have held out promises of gift of 30 acres of land to the voters and Rs. 0/8/0 or one rupee as remuneration to each menial class voter.

12. Lastly, it is alleged that the Return of election expenses filed by the Respondent No. 1 is incorrect.

13. The allegations made by the Petitioner are denied intoto by Respondent

No. 1. He has denied that his age was below 25 years. He has pleaded that no copy of any Government Gazette was produced before the Returning Officer and that the entries in the College and School Registers are all wrong. He contends that the entry about age given in the Electoral Roll is conclusive evidence of the right of an elector to stand for election, and that this Tribunal cannot go behind such entry.

14. The other allegations made by the petitioner are also denied and it is pleaded that the election has been free and fair.

15. A legal objection was raised regarding the non-joinder of Shiv Kumar Sharma who was a duly nominated candidate.

16. No. other respondent put in an appearance in answer to notices served on them in September, 1952. It was after the close of the evidence of the petitioner and Respondent No. 1 that applications were filed by Respondents No. 4 and 6

to be allowed to put in written statement and to produce evidence. The belated applications were dismissed by our order dated 19th May, 1953, but the counsel for Respondent No. 6 was allowed to argue the case.

17. The question of non-joinder was decided by our order, dated 26th November, 1952, by which we held that candidates who had withdrawn their candidature under section 37 of the R. P. Act of 1951 were not necessary parties, within the meaning of Section 82 of the said act.

18. The question whether the Tribunal can go behind the entry in the Electoral Roll has been decided in affirmative by a recent judgment of the Hon'ble Judicial Commissioner, Vindhya Pradesh, Rewa, in the writ petition filed by Shri Jagdish Chand Joshi, which was decided on 22nd April, 1953.

19. The other issues were framed on 6th June, 1953 and are as follows:—

II(a) Was respondent No. 1 (Shriniwas Tiwari) less than 25 years of age at the date of the nomination and hence was his nomination paper improperly accepted?

(b) If so, what is the effect?

III(a) Have there been contraventions of the provisions of the R.P. Act and of the Rules made thereunder, as alleged in paras 4 and 5 of the petition?

(b) If so, has the result of the Election been materially affected thereby, and in that case what is the result?

IV(a) Did respondent No. 1 raise the issue of Brahmins versus Kshatriyas in the Constituency and did he propagate that it would be a sin to vote for Kshatriyas?

(b) if so, what is the effect?

V(a) Did respondent No. 1 promise to give 30 acres of land to those who would vote for him and did he pay Rs. 1/8/0 to each voter of the menial class who voted for him on the pretext that it was being paid as remuneration?

(b) if so, what is the effect?

VI (a) Is the return of election expenses filed by respondent No. 1 false in material particulars?

(b) if so, what is the effect?

VII(a) Is the election of respondent No. 1 liable to be set aside?

(b) Is petitioner entitled to a declaration that he should be deemed to have been duly elected?

(c) Is petitioner entitled to costs?

20. Both parties have produced their evidence with regard to Issue No. II alone. They have stated that they do not wish to produce any evidence on the other issues. So we find that issues Nos. III to VI must be held to be not proved. We proceed to discuss the issue No. II.

21. Issue No. II.—According to this Issue, the onus is on petitioner to show that, on the date of nomination, the age of Shri Niwas Tiwari was below 25 years and hence that his nomination paper was improperly accepted. If this is proved, we have to see what is the effect of such acceptance.

22. Before we deal with the evidence relating to the question of age, we have to discuss a legal point raised by the learned counsel for Respondent No. 1. He urged that the age of a person is to be computed, not from his birth, but from the time of his conception. In support of this contention he has cited some cases under Hindu and Mahammedan Laws, in which in some cases, an unborn child has been accorded certain rights. The personal laws of parties may contain special provisions vesting unborn children with certain rights, but otherwise the age of a person must, in our opinion, be computed from the date of his birth. For instance, reference may be made to the Indian Majority Act of 1775 of which Section 4 provides that the age is to be computed, from the date of birth. This interpretation holds good in all enactments in which the question of age is to be decided, and leaving aside special provisions of personal law, it must be held that the age of a person is to be computed from the date of his birth. We therefore find ourselves unable to agree with the legal point regarding age raised by the learned counsel for Respondent No. 1.

23. Now we proceed to discuss the oral and documentary evidence produced by both parties on the question of age.

24. The first witness of the petitioner is Shri Jagdamba Prasad Shrivastava, Asstt. Supdt. D.C's Offcc, Rewa. He has produced the election papers summoned from him. These have been marked Ex. P.W. 1/1 to P.W. 1/10. They include nomination papers filed, a receipt of return of a horoscope, return of election expenses, form No. 16, complaint filed etc.

25. The second witness is Shri Govind Singh, Supdt. of Police, Chatarpur. He has produced the service book (Ex. P.W. 2/1) of Tirath Prasad Tiwari, S.I. of Police. This service book has evidently been summoned by the petitioner to show that Respondent No. 1's brother Tirath Prasad Tiwari was born on 1st June, 1924, mentioned in the service book. We failed to see how this evidence would help us to fix the date of birth of Respondent No. 1. Moreover the entry of the date of birth of Tirath Prasad Tiwari in the service book has not been proved by this or any other witness to be correct.

26. Petitioner's 3rd witness is Shri Ram Kishore who has produced true copies of entries in the Rewa Raj Gazette dated 25th May, 1940, relating to the Hindi Middle School Examination results (Ex. P.W. 3/1 and P.W. 3/2).

27. He has similarly produced copies of entries from the Gazette of India dated 29th July, 1944 containing the results of Matriculation Examination of the Ajmer Board. They relate to Shriniwas Tiwari and Tirath Prasad Tiwari. They have been marked Ex. P.W. 3/3 and P.W. 3/4. This witness has stated, however, that he cannot fix the identity of the candidates, whose results have appeared in the Gazette.

28. Shri Ram Kumar P.W. 4 is the Fee Clerk in the Durbar College, Rewa. He has produced an application for admission to the Intermediate (Arts) Class (Ex. P.W. 4/1) and an application for the admission to the 3rd year (Arts) Class P.W. 4/2). He has stated that these applications purport to be signed by one Shri Niwas Tiwari. In other words he is unable to fix the identity of the person who signed these admission forms.

29. Shri Keshav Shanker Kelkar P.W. 5 is a teacher in the Martand High School, Rewa. He has produced an application for admission on behalf of Shriniwas Tiwari purporting to be signed by one Jagdish Prasad Tiwari. It is marked Ex. P.W. 5/1. The transfer certificate attached to this application is marked P.W. 5/2. In this application for admission the date of birth of the scholar is given as 1st June, 1927 but this witness has admitted that the entries in the School Register were based on entries made by the guardian and entries existing in the previous School Certificates. It is also stated that, in case of first admission of a boy in a school, the statement of the guardian given on the admission form is given effect to and no enquiry is made.

30. The next witness is Rameshwar Prasad Dube, Asst. Teacher in the A. V. M. School, Uprahatti, Rewa. He has stated that the application form for admission filed by Shriniwas Tiwari in the School is not lacearable. He has filed a copy of an entry from the School Register relating to one Shriniwas Tiwari and another relating to Tirath Prasad Tiwari. These are marked Ex. P.W. 6/1. He states that these entries were made on the basis of transfer certificate entries Ex. P.W. 6/2. He has admitted that the date of birth of Shriniwas Tiwari given in the relevant entry as well as the date of birth of Tirath Prasad Tiwari appeared to be in rather faded ink as compared with other entries. Moreover two entries No. 522 and 523 with regard to admission of Tirath Prasad and Shri Niwas Tiwari have been struck off in this register without being initialled. Another entry on this page has been penned through without being initialled. An entry in column No. 2 of serial No. 513 has been corrected without anybody's initials. So it is clear that this register has been most irregularly kept and its evidentiary value is very little.

31. In rebuttal respondent has produced 8 witnesses before this Tribunal and examined two Doctors at Lucknow on Commission.

32. Bhagwan Ram R.W. 1 and Baikunth Prasad R.W. 2 are two residents of respondent No. 1's home village, according to them Respondent No. 1 was born in the month of Chait. Sambat 1982 equal to end of March 1925 or beginning of April, 1925. This Baikunth Prasad is a member of the Village Panchayat and also Pawaldar and Mukhia.

33. The next witness is respondent No. 1's father Mangal Deen. He is a member of the Village Panchayat and its elected President. He proves the date of birth of respondent No. 1 as being Chait Sud 6th 1982 Sambat (equal to 30th March, 1925). This witness also proves the horoscope Ex. R.W. 3/1 as relating to Shri Niwas Tiwari and states it was prepared by Pandit Shobhnath, who died 7 years

ago. The son of this Pandit Shobhnath has appeared as R.W. 5 and has proved that this horoscope is in his father's handwriting. According to the horoscope the date of birth of respondent No. 1 also comes to 30th March, 1925, Mangal Deen has also stated that Shrinivas Tiwari Respondent No. 1 was admitted in the Mangawan School in 1931 in class A and that at the time of admission no form was filled up by him nor did anybody make any enquiry about his age.

34. The next witness is Shri Mahabir Prasad Shrivastava, Revenue Secretary, to the Govt. of V. P. Rewa, who has proved a certificate of age issued by him to respondent No. 1. This is marked R.W. 4/1. He states that on 24th October, 1951 when he issued this certificate, a horoscope and affidavit were produced before him and he prepared the certificate on basis of these documents. This certificate is however of no evidentiary value.

35. Ramkishore R.W. 6 lives in a neighbouring village to that of respondent No. 1. He also gives the date of birth of respondent No. 1 as end of March or beginning of April, 1925.

36. Shanker Shan Prasad is the Head Master of Middle School of Ramnai. He was a teacher in the Mangawn Hindi Middle School from 1929 to 1933. He states that respondent No. 1 was admitted to class A in that School in 1931 and that no admission form was filled in and the age was entered by the teacher as the result of guess made by him. He gives the age of respondent No. 1 in 1931 as about years. This statement supports the statement of respondent No. 1's father, regarding the absence of admission form or enquiry about age when Respondent No. 1 joined the school.

37. The last witness produced before us is Shri Madhusudan Prasad who is a practising lawyer at Rewa. He proves the entry No. 757 (Sic 857) in the Municipal voters list Ex. P.W. 1/10 as relating to Shri Niwas Tiwari. In this the age is given as 24 years

38. A legal question arises with regard to the nature of the documents summoned by the petitioner and their evidentiary value. It has been urged by the learned counsel for respondent No. 6 that the Government Gazettes are public documents and the entries existing in them need not be proved. We are unable to agree with this contention. Even if the Government Gazette is a public document the identity of the person mentioned in such gazettes must be proved in each case. Under Section 74 and 77 of the Indian Evidence Act certified copies of such entries are admissible in evidence as proof of the entry but not of the contents (See A.I.R.-1938 Calcutta page 120, Wood-Roffe's Evidence Act V Edition page 355).

39. As regards the School Registers we have remarked above that they have been shown to have been most irregularly kept and that there is no proof of identity of the persons named in the entries produced before us. No one who made such entries has come forward as a witness.

40. Moreover it has not been shown that registers were enjoined by law in force at that time, to be kept in a particular form or after proper enquiry. Till these things are proved the value of the entries in such registers is practically nil.

41. It was held in A.I.R. 1931 Allahabad page 307 that a mere entry, even in a birth register, is insufficient to prove the date of birth. Similarly in AIR 1936 Lahore page 965 it was held that an entry may be admissible under section 35 of the Indian Evidence Act, but there must be proof of a statutory obligation on the officials who prepared the registers to make enquiries before making the entries. In the present case there is no proof of such obligation or enquiry.

42. It was also held in A.I.R. 1936 Labore 598 that entries in a School register are of little value as evidence of age. In the present case even that little value disappears when there is proof of irregularity of registers and no proof of the writing of the entries and the basis of the entries.

43. There remains the medical evidence produced in this case. Dr. R. S. Dixit, Civil Surgeon, Lucknow and Dr. C. Chatterjee, Radiologist, Lucknow were examined on commission.

44. Dr. Chatterjee prepared the X-Ray plates marked Ex. A/R.W. 9 to Ex. F/R.W. 9. Out of these four are dental plates. He states that these are of Shrinivas Tiwari respondent No. 1.

45. Dr. Dixit examined Shrinivas Tiwari on 12th October, 1952 and recorded his opinion Ex. R. 1/R.W. 10. On the basis of the date noted at the time of the Physical Examination he is of the opinion that the age of Shrinivas Tiwari on that date was nearer 27 years than 25 years. This opinion and the basis of the opinion have not been challenged by any cross-examination.

46. The medical evidence therefore fully supports the oral evidence produced by Respondent No. 1. We may however remark that the medical evidence is necessarily inconclusive about the precise age.

47. The result is that we are unable to hold on the material on record that Respondent No. 1's age at the time of nomination was below 25 years. The facts proved before us tend to show on the other hand that his age was over 25 years in December, 1951.

48. We therefore held that the petitioner has failed to prove issue No. II.

49. Other pleas covered by issues III to VI have not been pressed and these issues stand as unproved.

50. *Issue No. VII* --In the absence of proof of respondent No. 1's age being less than 25 years at the time of nomination and also for want of any evidence to support the other allegations of irregularities etc. made in the petition, the petition must fail.

51. We accordingly order that the petition be dismissed with costs. We assess the costs at Rs. 100 payable by the petitioner to respondent No. 1.

52. In this case Shri Lal Ramesh Pratap Singh, pleader, appeared for the petitioner, and Shri B. C. Dey, Advocate for respondent No. 6, and Shri S. C. Khare, Advocate and Shri Jagdish Chand Joshi, Pleader, appeared for respondent No. 1.

ANNOUNCED

E MUKARJI, Chairman.

G. L SHRIVASTAVA, Member.

U S PRASAD. Member

[No 19/74/52-Elec.III/8229.]

By Order,

P. R. KRISHNAMURTHY, Asstt. Secy.

